**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

(Chapter VIII Rule 32(2) (b)

Description of Case.

**Criminal Appeal No. 1625 of 2001**
**(Old No. 646 of 1995)**

Date of decision : 23rd November, 2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date : 23.11.2007 Initials of Judge

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**HIGH COURT OF UTTARAKHAND, AT NAINITAL**
**Criminal Appeal No.1625 of 2001**
**(Old No. 646 of 1995)**

Nawab S/o Akhtar
R/o Chandra Sheikhar Azad Colony
R/o P. Bindal
P.S. Cantt. Dehradun .....Appellant

Versus

State ..... Respondent

**Delivery of Judgment : 23rd November, 2007**

Mr. S. K. Mishra, Amicus Curiae for the appellant.
Mr. Amit Bhatt, Addl. Government Advocate for respondent.

**Coram: Hon'ble Rajeev Gupta, C.J.**
**Hon'ble J. C. S. Rawat, J.**

**Per:- Hon'ble J.C.S. Rawat, J.**

This criminal appeal has been filed against the judgment & order dated 07.02.1995 passed by Smt. Sadhna Chaudhary, the then IInd Additional Sessions Judge, Dehradun in S.T. No.133 of 1993, whereby the appellant was convicted and sentenced to undergo for imprisonment for life and a fine of Rs.5000 under section 302 IPC; for three years' R.I. and fine of Rs.500/- under section 363 IPC; for seven years' R.I. and fine of Rs.1000 under section 366 IPC; and for ten years R.I. and a fine of Rs.2000 under section 376 IPC. All the sentences were to run concurrently. In default of payment of fine, the appellant was to undergo for further six months' R.I., one year's R.I., one and a half year's R.I. and two years' R.I. under sections 363, 366, 376 and 302 IPC respectively.

2. The facts, in nutshell, are that on 25.05.1993 a written report Ex.ka.1 was lodged by Abbas PW1 in the police station alleging therein that on 25.05.1993 at about 8 a.m. he had gone to his work to Khurbura

Mohalla and his wife Haneefa had also gone to the market in connection with some household work. His children i.e. son Javed aged 11 years, two small daughters aged 2½ and 3½ years and victim Tabassum aged about 13 years were at home. When Abbas PW1 came back in the evening at about 4pm, he inquired about his wife and daughter Km. Tabassum. He was told that his wife had gone to market and Tabassum was called by her cousin-appellant from her house and she was taken away by accused Nawab and since then she did not return. Thereafter, Abbas PW1 went to the *'Khoka'* (wooden house) of Nawab and found that the *'Khoka'* was locked. When he peeped into the 'Khoka' of Nawab it was found that his daughter was lying dead inside the *'Khoka'*. Thereafter, the report was lodged in the police station. On the basis of report, a Chick FIR was prepared and necessary entires were made in the general diary. The police reached there and broke open the lock. The lock, latch and chain were sealed on the spot. Tabassum was lying dead in the room. The scarf was tied around her neck with which she was strangulated. It was also found that she had been raped. The police took the scarf into his possession. The blood was oozing from her vagina. The police took the sample of blood stained earth the plain earth from the spot. The dead body of the deceased was sent for postmortem. After completing the investigation, the Investigating Officer submitted the chargesheet before the court against the appellant.

3. After submission of chargesheet the appellant-accused was committed to the court of Sessions for trial and the trial court framed charges against the

accused person. He denied the charges levelled against him and claimed his trial.

4. The prosecution in support of its case examined nine witnesses. Abbas PW1 – the father of the deceased got scribed the report through Suresh Gupta. Salim PW2 saw the appellant locking his khoka at about 1:45 to 2p.m. on the date of incident. The appellant was the nephew of Abbas PW1. Suresh Gupta PW3 scribed the report on the dictation of Abbas PW1. The prosecution has adduced the evidence of Ramesh PW4, who on the date of incident was standing in front of grocery shop of Sher Singh. At about 1 to 1:30pm on the date of incident, he saw the deceased going with appellant-accused Nawab. The accused took her to his Khoka. Javed PW5 is the real brother of the deceased and on the date of incident he was at his house with his younger sister and the elder sister Km. Tabassum. He further stated that the appellant came to his house in the morning on the date of incident, called his elder sister Tabassum and took her with him. Thereafter, she did not return to her house. Constable Clerk – Ved Prakash PW6 has proved the chick report and the G.D. report. Constable Charan Singh PW7 took the dead body of the deceased for postmortem. Dr. B. K. Andle PW8 is the medical officer, who conducted the postmortem on the dead body of the deceased. The prosecution has also adduced the evidence of S.I. - Ashok Kumar Verma PW9 who proved the Ex.A10 and Ex.A11. S.I. – Rakesh Babu Yadav C.W.1 was the Investigating Officer of this case and he was examined as Court Witness.

5. The accused person was examined u/s 313 Cr.P.C. and he has pleaded not guilty to the offence. He has stated that he has been falsely implicated in this case.

6. The accused-appellant in the trial eventually was convicted and sentenced by the trial court as mentioned above.

7. We have heard learned Amicus Curiae for the accused-appellant and learned Addl. Government Advocate for the respondent-State. Perused the record carefully.

8. At the outset, it needs to be mentioned here that it is not disputed that deceased died on account of ante-mortem injuries sustained by her on the date of occurrence. Dr. B. K. Andle (PW8), Medical Officer conducted the postmortem of deceased on 26.05.1993 at 2:00 p.m. and found following ante-mortem injuries on the person of the deceased:-

| | |
|---|---|
| (i) | Multiple contusion in an area of 10cm X 1½ cm in front of the neck. |
| (ii) | Multiple contusion 1cm x 1½, 2cm above the right eye. |
| (iii) | Ligature mark around the neck in 15cm x1½cm half cm below the thyroid extending middle of left side back. |
| (iv) | Contusion 3cm x 1½cm in left side of face. |
| (v) | Contusion 1½cm x 1½cm inside the lower lip. |
| (vi) | Lacerated wound 4cm x 2cm inside the vagina with |

blood staining and clotted blood.

On internal examination about 4½ ounce half digested food was found in the stomach. The death of the deceased was caused by strangulation and asphyxia. In the opinion of Medical Officer, the possibility of death of the deceased was in between 12:30 to 1:30 afternoon. On the basis of internal injury the possibility of raping the girl was there. The medical officer has proved the postmortem report Ex.ka.9. Thus, it is amply established that the deceased met a homicidal death on account of ante-mortem injuries sustained by her.

9. Now, we have to consider as to whether the appellant-accused was responsible for the offences. The prosecution has examined nine witnesses in all. Suffice it to observe that there is no direct evidence connecting the appellant-accused with the offences charged. The prosecution case depends on circumstantial evidence. We would proceed to examine each of the pieces of incriminating circumstantial evidence so as to find out if each one of the circumstantial evidence is proved individually and whether collectively it forges such a chain of incriminating circumstances as would fasten the guilt on the accused beyond any shadow of reasonable doubt.

10. The first circumstance projected by the prosecution is that on the date of incident deceased Tabassum was lastly seen alive in the company of the

appellant-accused. The prosecution has adduced the evidence of Javed PW5, the brother of the deceased, who was aged about 11 years at the time of incident. Javed PW5 has stated in his evidence that he is the real brother of the deceased and on the date of incident he was in his house alongwith his sisters, including the deceased. His mother Haneefa had gone to market and his father Abbas PW1 has gone out for his job. Appellant-Nawab came to his house and called his sister-deceased. On the call of the appellant, his sister-Tabassum went with him and thereafter she did not return to home. The prosecution has also adduced the evidence of Ramesh PW4 who had deposed in his evidence that on the date of incident at about 1:00 to 1:30 p.m. when he was standing in front of the grocery shop of one Sher Singh he saw the appellant going with Tabassum. The appellant took her in his 'Khoka' and thereafter he did not see Tabassum alive. Ramesh PW4 has further stated in his evidence that at about 4 to 4:30pm on the same day, he came to know that the dead body of the deceased was found lying in the 'Khoka' which was locked from outside. Thereafter, he reached in the house of the accused-appellant. The police came to the spot after recording the report. The police broke open the lock and a recovery memo thereof was prepared. The dead body of the deceased was also found in the 'Khoka' of appellant and a light blue scarf was found around the neck of the deceased. Thus, it is established by the evidence of Ramesh PW4 and Javed PW5 that it was the appellant who took Tabassum from her house on the date of incident and they were seen together by Ramesh PW4 and Javed

PW5 immediately before the dead body of the deceased was recovered from the ‘Khoka’ of the appellant. We have gone through the evidence of Ramesh PW4 and Javed PW5. Both the witnesses have corroborated the evidence of each other in all material particulars. The trial court found the evidence of both these witnesses to be implicitly truthful and reliable though the presence of Ramesh PW4 was attempted to be shown as doubtful. It was submitted that Ramesh PW4 had admitted in his cross examination that he had gone to his work at about 8a.m. in the morning. Learned Amicus Curiae for the appellant attempted to show that if Ramesh PW4 had gone to attend his job, it was not possible for him to come during the course of the day at the place of the incident. Learned Addl. G.A. refuted the same. It is pertinent to mention here that Ramesh PW4 has categorically stated in his evidence that he was working on wages at about 1½ km away from his residence and at about 1 to 1:30pm he had come to the grocery shop of one Sher Singh where he saw the deceased and the appellant going together. Generally, the labourers get the lunch time in between 1 to 2pm. Ramesh PW4 came to the shop of Sher Singh where he saw the deceased and the appellant together at about 1 to 1:30 p.m. The evidence of Javed PW5 and Ramesh PW4 is consistent, cogent and credible. The presence of these two witnesses at the spot is also natural. The presence of Ramesh PW4 at the relevant time was explained and his evidence cannot be thrown out as unreliable or tainted. They have supported the prosecution case in all material particulars and no infirmity could be pointed out in their evidence. The prosecution has led the evidence to show that the

deceased was in the company of the appellant upto 1:30pm on the date of the incident. Thereafter, the dead body of the deceased was recovered from the ‘Khoka’ of the appellant on the same day at about 4 to 5pm. It is well settled position of law that last seen theory comes into play where the time gap between the point of time when the accused/appellant and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused/appellant being the author of the crime becomes impossible. As we have noticed above that the prosecution has established that the deceased was lastly seen in the company of the accused/appellant at about 1 to 1:30 p.m. on the date of incident. It is also undisputed that the dead body of the deceased was found in the appellant’s ‘Khoka’ at about 4-5pm on the same day. The appellant and the deceased were lastly seen together at about 1-1:30pm on the date of incident and thereafter the deceased was never seen alive and her dead body was found in the appellant’s Khoka in the evening of the same day. This circumstance projected by the prosecution goes against the appellant.

11. The next circumstance projected by the prosecution is that the appellant was locking his ‘Khoka’ at about 2pm on the date of incident. The prosecution has adduced the evidence of Salim PW2 who has stated in his statement that on the date of incident he was coming back from his job at about 1:45 to 2pm. When he reached near the ‘Khoka’ of the appellant he saw that the appellant was locking his ‘Khoka’ all alone. Thereafter, the appellant left the place of occurrence

and in the evening he came to know that Tabassum has been murdered. Ramesh PW4 has stated in his evidence that he saw the appellant taking the victim (Tabassum) into his ‘Khoka’ at about 1 to 1:30pm on the date of the incident. Salim PW2 was cross examined at length by the defence, but nothing could be elicited from his evidence. The presence of Ramesh PW4 and Salim PW2 is natural at the place of occurrence. The evidence of both witnesses is consistent, credible and cogent. Both the witnesses have explained their presence at the relevant time and their evidence cannot be thrown out as unreliable or tainted. They have supported the prosecution case in all material particulars and no infirmity could be pointed out in their evidence. It is amply proved by the prosecution evidence that the appellant took deceased Tabassum in his ‘Khoka’ at about 1 to 1:30pm and after little later the appellant was seen closing the Khoka without the company of Tabassum. In the evening, the dead body of the deceased was found in the appellant’s ‘Khoka’ at about 4-5pm on the same day. It is also established by the evidence of the prosecution that the appellant was in possession of the ‘Khoka’ and he locked it at about 2pm. Thus, this circumstance is proved beyond reasonable doubt which leads to take an inference that it was the appellant who committed the murder of the deceased on the date of incident.

12. In the aforesaid circumstances, it was obligatory on the part of the appellant to satisfy the court as to when and as to what manner the deceased parted the company of the accused/appellant. The entire evidence of last seen adduced by the prosecution was put to the

appellant under section 313 Cr.P.C. in which he has not given any explanation which was obligatory on the part of the accused. He has merely denied all the evidence produced by the prosecution. He has not given any explanation in this regard. On the contrary, the prosecution has been able to establish the fact that on the date of occurrence the deceased was in the company of the appellant. The Hon'ble Apex Court has held in catena of decisions that if the prosecution establishes that the missing person was last seen in the company of the accused and was never seen thereafter then it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company. The Hon'ble Apex Court in the case of **Joseph Versus State of Kerala (2000) 5 SCC p/197** has held as under: -

> *"14. The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the appellant and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence at any rate of the appellant. During the time of questioning under Section 313 CrPC, the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculpating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the Court not only lost the opportunity but stood self-condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed...."*

13. The Apex Court in the case of **Mani Kumar Thapa Vs. State of Sikkim** reported in **2002 SCC (Cri) 1637** has held in para 6 as under:-

> *"6. ..... If we analyse the prosecution evidence further it is seen that in regard to travelling in the jeep from where they picked up the deceased then on to Ramam Checkpost and back, we see the appellant has given 3 different versions on 3 different occasions. To PW 5 he stated that while taking the deceased towards Singla from the checkpost, he allowed him to run away from the jeep after they crosses Ramam Checkpost when A-1 had got down from the jeep to ease himself. To PW 36 he told that when they were bringing a smuggler from Darjeeling side to Ramam Checkpost i.e. from the opposite direction the smuggler escaped from the jeep and in the process of running he fell down and suffered fatal injuries. In his statement under Section 313 CrPC before the court, he stated that on 12-2-1988 he had gone to Soreng on the orders of his SP as the Chief Minister was visiting Soreng and on the evening of that day as he did not have any vehicle, he took a 'lift' in the vehicle of A-1 up to Jorethang from where he went to his quarters and Accused 1 went to Naya Bazar Dak Bunglow as he was camping there on duty. These 3 different versions which are self-contradictory further show that the appellant has not been consistent in his stand as to what happened on 1 2-2-1988. This Court in the case of* ***State of Maharashtra v. Suresh, 2000 SCC (Cri) 263*** *has held that a false answer offered by the accused when his attention was drawn to any inculpating circumstance would render such circumstance as capable of inculpating him. The Court also held that in such a situation a false answer can also be counted as providing "a missing link" in completing the chain. If the said principle in law is to be accepted, the statement of the appellant made under Section 313 CrPC being palpably false and there being cogent evidence adduced by the prosecution to show that the appellant had given two other versions as to the incident 12-2-1988, we will have to proceed on the basis that the appellant has not explained the inculpating circumstances established by the prosecution against him which would form an additional link in the chain of circumstances. ....."*

14. The Hon'ble Apex Court in the case of **Sahadevan Vs. State represented by Inspector of Police, Chennai** reported in **(2003) 1 SCC 534** has held in para 19 as under:-

> *"19. The last circumstance relied on by the courts below pertains to the stand taken by the appellants in the trial as to parting company with Vadivelu. Here we must notice that as discussed*
>
> *hereinabove, the prosecution has established the fact that Vadivelu was seen in the company of the*

*appellants from the morning of 5-3-1985 till at least 5 p.m. on the same day, when he was brought to his house and thereafter his dead body was found in the morning of 6-3-1985. Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever. In the evidence of PW 25, it is elicited that on 5-3-1985 in the afternoon when Vadivelu was produced before the said witness, he after interrogation allowed Vadivelu to go, but then it is found from his evidence that he instructed A-1 to keep a watch over Vadivelu. In such circumstances, it was incumbent upon A-1 to have explained to the court in what circumstances they parted company. He has not given any explanation in this regard. On the contrary, the prosecution has established the fact that on the very day at about 5 p.m., Vadivelu was brought to the house of PW 1 by the appellants which was seen by PW 5. This part of the evidence of PW 5 has gone unchallenged in the cross-examination and, therefore, we will have to proceed on the basis that what is stated by PW 5 in this regard is true. If that be so, the prosecution has established the fact that on 5-3-1985 at 5 p.m. Vadivelu was still in the company of these appellants and, therefore, in the absence of any specific explanation from the appellants in this regard, and in view of the other incriminating circumstances against the appellants having been proved by the prosecution, an adverse inference will have to be drawn against these appellants as to their part in the missing of Vadivelu. At this point, it may be relevant to note that though no specific stand has been taken by the appellants as to their parting company with Vadivelu, in their statement under Section 313 CrPC, it is seen from the evidence of PWs 1 and 5 that A-1 told the said witnesses on the night intervening between 5-3-1985 and 6-3-1985 that Vadivelu had escaped from the police station when he was allowed to sleep in the verandah of the police station. This explanation given by A-1 to PW 1 which was also heard by PWs 5 and 14, clearly shows that the same is totally false and obviously was an excuse made by appellants to conceal the true facts and, therefore, this circumstance of A-1 making a false statement of PW 1 can also be taken as a circumstance against the appellants, in establishing the appellants' guilt. This*

*C ourt in more than one case has held, that if the prosecution based on reliable evidence, establishes that the missing person was last seen in the company of the accused and was never seen*

*thereafter, it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company. (See Joseph v. State of Kerala, 2000 SCC (Cri) 926) Therefore, we are in agreement with the finding of the courts below that Circumstance 7 also stands established against the appellants."*

In view of the above, we are completely in agreement with the findings recorded by the trial court that the prosecution has established that on the date of occurrence the deceased was called from her house by the appellant in presence of Javed PW5 and, thereafter, the appellant and the deceased were seen together by Ramesh PW4.

15. The next circumstance projected by the prosecution is that the dead body of the deceased was found in the 'Khoka' of appellant at about 4pm on the date of incident. The prosecution in support of this circumstance has adduced the evidence of Abbas PW1 – the father of the deceased, who has stated in his evidence that when he came back to his house he came to know that in his absence the appellant took the deceased at about 12:30pm on the date of incident. His wife was also not present in his house at the time when the appellant took his daughter. The fact of taking the deceased by the appellant was narrated by Javed PW5 to his father Abbas PW1. Javed PW5 also informed that Tabassum did not come back to the house. Similarly, the other witness Ramesh PW4 has also stated that on the date of incident when he was in the shop of Sher Singh he saw the deceased going with the appellant at about 1:30pm. Ramesh PW4 also informed to Abbas PW1 that he had seen the appellant and deceased going to the appellant's Khoka. Thereafter, he was informed that his daughter has not

come back. He went to the Khoka of the appellant where he found that the said Khoka was locked from outside. Abbas PW1 peeped through door of the khoka and found that his daughter Tabassum was lying in the Khoka. Abbas PW1 called her, but when she did not respond him he made a cry. Thereafter, Salim PW2 and other people gathered there and Salim told him that he saw the appellant locking the 'Khoka' from outside at about 1:45pm. Suresh Gupta PW3, who also reached at the spot scribed a report about the incident and Abbas PW1 reported the matter to the police. Thereafter, the Court Witness – S.I. Rakesh Balu Yadav, the Investigating Officer reached at the spot and broke open the lock/latch of the Khoka in presence of Suresh Gupta PW3 and Ramesh PW4. Suresh Gupta PW3 and Ramesh PW4 have corroborated this fact that the lock/latch of the Khoka was broken by the police and a recovery memo was prepared at the spot which was duly signed by the witnesses. The dead body of the deceased was found in the Khoka of the appellant. It was found that the scarf was tied on her neck with which she was strangulated. Suresh Gupta PW3 has also stated in his evidence that the vagina of the deceased was bleeding and blood was found on the earth. Abbas PW1 has stated in his evidence that the police came at the spot and after breaking the lock the dead body of the deceased was found lying inside the Khoka of the appellant. Suresh Gupta PW3 has stated in his evidence that he scribed the report and after lodging it at the police station by the father of the deceased the police reached at the spot and broke open the lock in his presence and in presence of Ramesh PW4. The recovery memo of the lock was prepared

which was marked as Ex.ka.2. After opening the Khoka the dead body of the deceased was found lying in the Khoka of the appellant and a scarf was found around her neck with which she was strangulated. The blood was oozing from her vagina and the blood was also found on the earth. Both the witnesses have proved the recovery memo of the dead body of the deceased. It has been established by the prosecution that the appellant had taken the deceased to his Khoka and this fact has been proved by Javed and Ramesh PW4 in their evidence. Ramesh PW4 has proved that he has seen the appellant taking the deceased inside the Khoka at about 1:30pm. Salim PW2 has established the fact that he had seen the appellant locking the Khoka from outside and thereafter the dead body of the deceased was found lying in the Khoka of the appellant. It is further established that the appellant was in the exclusive possession of the Khoka at the time when the deceased was seen going into the Khoka and when the appellant was locking the Khoka from outside.

16. Learned Amicus Curiae for the appellant has categorically stated that he is not disputing the recovery or the dead body from the Khoka of the appellant. He tried to emphasise that the said Khoka was not in exclusive possession of the appellant in view of the evidence of Javed PW5. It was further submitted that on Riyasat who is the maternal uncle of the appellant also resides in the same Khoka. Learned Addl. G.A. refuted the submission. The said submission of the learned Amicus Curiae had no force because the prosecution has established by the cogent evidence that the appellant took the deceased in his khoka and

after some time he came alone from the Khoka and locked it from outside. In the evening, the dead body of the deceased was found lying in the Khoka and it was also disclosed at the time of recovery that she has been raped and strangulated by scarf. There is no effective cross examination on behalf of the defence to the witnesses that during the intervening period Riyasat was present in the Khoka. The evidence of the prosecution to the point that the Khoka was in exclusive possession of the appellant at the time of the incident and till the time of the recovery is credible and cogent. Thus, we find that this circumstance also leads to take an inference that the deceased was murdered by the appellant.

17. The next circumstance projected by the prosecution is that a scarf was found around the neck of the deceased by which she was strangulated. The scarf belonged to the appellant and it was seen with the appellant by the witnesses earlier as well. The prosecution has adduced the evidence of Suresh Gupta PW3 who has stated in his evidence that his house was situated in front of the appellant's house. At about 4 to 4:30pm when he heard some noise, he came outside from his house and saw that Abbas PW1 was crying. Suresh Gupta PW3 has further stated that after lodging the report the I.O. recovered the dead body of the deceased from the Khoka of the appellant. It was also found that the scarf was tied around her neck with which she was strangulated. The said scarf belonged to the appellant and it was seen with the appellant earlier. The prosecution has also adduced the evidence of Ramesh PW4 who has stated in his evidence that at the

time of the recovery of the dead body of the deceased, a scarf was found tied on her neck with which she was strangulated. He has further stated that the said scarf with the appellant earlier. Both the witnesses i.e. Suresh Gupta PW3 and Ramesh PW4 have testified that the said scarf was recovered from the neck of the deceased at the time of recovery of the dead body, and they have seen the said scarf wearing the appellant before the recovery of the dead body.

18 Learned Amicus Curiae for the appellant further contended that Ramesh PW4 has stated in his evidence that the scarf was blue in colour while Suresh Gupta PW3 has stated in his evidence that it was gray in colour. It was further contended that the circumstance projected by the prosecution that the scarf belongs to the appellant by which the deceased was strangulated becomes unreliable. Learned Addl. G.A. refuted the contention. Learned trial court while rejecting the contention of the defence has rightly observed the variation in the description of the colour of the scarf is concerned, it is just a matter of observation of the witnesses. For a layman, blue and gray colour may be of little difference and the learned trial court has rightly held that the colour of the scarf was such that a layman could observe it a blue colour because the said scarf was produced before the trial court. Learned trial court has rightly rejected the contention of the defence because the trial court had an occasion to see the colour of the scarf also. We are also in agreement with the findings recorded by the trial court in that behalf.

19. Thus, it is amply established that the scarf which belongs to the appellant was found tied on the neck of

the deceased at the time of the recovery of the dead body of the deceased. Thus, this circumstance also goes against the appellant.

20. The next circumstance projected by the prosecution is that the blood stained *'Kurta'* and *'Paijama'* of the appellant were found inside Khoka of the appellant. The prosecution in support of its case produced Javed PW5 who has stated in his evidence that when the deceased was taken by the appellant from the house, the appellant was wearing *'Kurta'* and *'Paijama'* (material exhibit-6) Ramesh PW4 has stated in his evidence that at about 1 to 1:30pm on the date of incident when he saw the appellant going with the deceased the appellant was wearing a light greenish and brownish *'Kurta'* and *'Paijama'.* The same clothes were found from the spot at the time of recovery of dead body by the police. Ramesh PW4 has stated in his evidence that the police has recovered the blood stained *'Kurta'* and *'Paijama'* of the appellant from the spot. Ramesh PW4 has identified these clothes before the court. He has further stated in his evidence that he had seen the appellant wearing these very clothes on the same day before the incident. Suresh Gupta PW3 has also stated in his evidence that the blood stained clothes i.e. Kurta & Paijama of the appellant were also taken into possession by the police vide Ex.ka.6. The prosecution has further established that the appellant

was wearing *'Kurta'* and *'Paijama'* immediately before the incident and thereafter these clothes were recovered from the spot. The recovery of *'Kurta'* and *'Paijama'* of the appellant from the spot goes against the appellant.

At least to take an inference that the appellant was responsible for the murder of the deceased.

21. It was further submitted on behalf of the appellant that the Khoka of the appellant where the deceased was alleged to have been raped and strangulated is a densely populated area. If the appellant would have committed offences the victim could have made hue and cry resulting which the people of the locality would have reached at the spot. Learned Addl. G.A. refuted the contention. It is not disputed that the victim was minor at the time of incident. She never had the knowledge that the appellant being close relative would commit such ghastly offence. It is the appellant who would have overpowered the deceased and she would not have any occasion to make hue and cry and as such it cannot be held that the deceased would have cried at the time of the commission of the offences. Therefore, we do not find any force in the contention raised on behalf of the appellant.

22. Dr. B. K. Andle, PW8 - Medical Officer has also proved that the death of the deceased was caused by strangulation and asphyxia. The Medical Officer has opined that the possibility of raping the girl was there. Thus, the appellant committed rape and murder of the deceased further stand corroborated by the medical report.

23. The incident took place in between 12 noon to 4pm on 25.05.1993. Abbas PW1 PW1 – father of the deceased promptly reported the matter to the police at

04:45 p.m. on the same day i.e. 25.05.1993. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. It is pertinent to mention here that there is a prompt FIR of the incidents by Abbas PW1 who lodged the report at the police station. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed.

24. The next link against the appellant is that the blood stained Kurta and Paijama of the appellant and 'Salvar' of the deceased were sent to the Serologist. According to the Serologist, the 'Paijama' worn by the appellant and 'salvar' worn by the deceased recovered by the police from the deceased were having spots of sperms on them. The prosecution has taken a case that the deceased was raped and thereafter she was strangulated. The spot of sperms on these clothes further fortifies the prosecution story.

25. We have gone through the entire evidence of the prosecution. We are of the view that the trial court has rightly analysed the evidence of the prosecution. All the witnesses produced by the prosecution are consistent and they remained consistent in the cross examination. They were cross examined at length, but

nothing could be elicited from their evidence to discard their evidence. The prosecution evidence clearly establishes that the participation of the appellant in the

crime. It is true that the conviction can be based solely on the circumstantial evidence but is should be tested on the touchstone of law relating to circumstantial evidence. The circumstantial evidence must be as such which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. When the evidence on record is analyzed in the background of the principles highlighted above, the inevitable conclusion is that the circumstances projected by the prosecution against appellant are consistent with the hypothesis of the guilt of the accused. After perusal of the entire evidence and the circumstances projected by the prosecution, we are of the view that the prosecution has established the case against the appellant.

26. We, therefore, hold that the prosecution has established the guilt, beyond reasonable doubt, against the appellant. We find that the learned trial court has rightly convicted and sentenced the appellant. In view of the forgoing discussion, we are completely in agreement with the findings recorded by the trial court.

27. Hence, the appeal is dismissed and the order of conviction and sentence passed by the trial court against the appellant is confirmed.

28. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within two months.

**(J.C.S.Rawat, J.)  (Rajeev Gupta, C.J.)**

Dated 23rd November, 2007
LSR